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DOUGLAS H. KRAFT, ESQ. (State Bar No. 155127)
KRAFT LAW
11335 Gold Express Drive, Suite 125
Gold River, California 95670
Telephone: (916) 880-3040
Facsimile: (916) 880-3045

HOWARD NEVINS, SBN 119366
AARON A. AVERY, SBN 245448
HEFNER, STARK & MAROIS, LLP
2150 River Plaza Drive, Suite 450
Sacramento, CA 95833-4136
Telephone: (916) 925-6620
Facsimile: (916) 925-1127

Attorneys for First Northern Bank of
Dixon, Creditor

UNITED STATES BANKRUPTCY COURT

EASTERN DISTRICT OF CALIFORNIA

SACRAMENTO DIVISION

In Re:

RUSSEL WAYNE LESTER, an individual,
dba Dixon Ridge Farms,

Debtor in Possession.

Case No: 20-24123-E-11

Chapter 11

DCN: FWP-2

Date: December 10, 2020
Time: 10:30 a.m.
Courtroom: 33 – Judge Ronald H. Sargis
501 I Street, 6th Floor
Sacramento, CA95814

CONDITIONAL CONSENT TO DEBTOR IN POSSESSION'S USE OF CASH

COLLATERAL AND GRANTING REPLACEMENT LIENS

First Northern Bank of Dixon, a California corporation (“**FNB**”), creditor in this case,
hereby files its conditional consent (the “**Consent**”) to the Motion For An Order Authorizing

1 Use of Cash Collateral and Granting Replacement Liens (the “**Motion**”) filed by the debtor in
2 possession, Russell Wayne Lester (“**Debtor in Possession**”).

3 On September 1, 2020, Debtor in Possession made his Emergency Motion for an
4 Order (A) Authorizing Interim and Final Use of Cash Collateral; (B) Granting Replacement
5 Liens; and (C) Scheduling Final Hearing Pursuant to Bankruptcy Rule 4001(the “**Motion**”).

6 On September 8, 2020, the Court entered its Order on the Motion (the “**First Interim**
7 **Order**”) which authorized the Debtor in Possession to use the Cash Collateral of FNB and
8 Prudential Insurance Company of America (“**Prudential**”) and any disputed producer lien
9 creditors that may exist (collectively, “**Secured Creditors**”) on an interim basis through
10 September 16, 2020, for necessary expenses in the amount of \$166,325.00 plus a 15%
11 variance for emergencies during the pre-harvest period as described in the Motion.

12 In addition, for the purpose of attempting to provide adequate protection for the
13 interests of the Secured Creditors, to the extent of any diminution in Secured Creditors’
14 interest in the Debtor in Possession’s pre-petition cash collateral caused by Debtor in
15 Possession’s post-petition use of such pre-petition cash collateral, the First Interim Order
16 granted to the Secured Creditors:

17 a. A valid, perfected, and enforceable replacement lien under Sections
18 105, 361(2), and 363(e) of the Bankruptcy Code in the Debtor in Possession’s post-petition
19 cash collateral and proceeds thereof to the same extent and with the same priority that
20 Secured Creditors held in the Debtor in Possession’s pre-petition cash collateral as of the
21 Petition Date, (the “**Cash Collateral Replacement Lien**”);

22 b. A valid, perfected, and enforceable replacement lien under Sections
23 105, 361(2), and 363(e) of the Bankruptcy Code in the Conservation Easement, as defined in
24 the Motion, to the same extent and with the same priority that Secured Creditors held in the
25 Debtor in Possession’s pre-petition cash collateral as of the Petition Date (the
26 “**Conservation Easement Replacement Lien**”).
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28 In addition, for the purpose of attempting to provide adequate protection for the

1 interests of FNB, to the extent of any diminution in FNB's interest in the Debtor in
2 Possession's pre-petition cash collateral caused by Debtor in Possession's post-petition use
3 of such pre-petition cash collateral, the Interim Order granted to FNB:

4 a. A valid, perfected, and enforceable replacement lien under Sections
5 105, 361(2), and 363(e) of the Bankruptcy Code in the Putah Creek Road real property, as
6 defined in the Motion to the same extent and with the same priority that the Bank held in the
7 Debtor in Possession's pre-petition cash collateral as of the Petition Date (the "**Putah Creek**
8 **Replacement Lien**");

9 b. To the extent that FNB does not already possess a valid, first priority
10 lien in the Debtor's crops now growing or grown in the 2020 crop year (the "**2020 Crops**"),
11 a valid, perfected, and enforceable first-priority lien, under Sections 105, 361(2), and 364(d)
12 of the Bankruptcy Code on all of the 2020 Crops, senior in priority to any other security
13 interests and liens in the 2020 Crops, to the same extent and validity of the lien of FNB held
14 in the Debtor in Possession's pre-petition cash collateral as of the Petition Date (the "**Post-**
15 **Petition Crop Lien**").

16
17 The First Interim Order set a continued interim hearing on the Motion for September
18 17, 2020 (the "**Second Hearing**").

19 On September 25, 2020, the Court entered its second Order on the Motion (the
20 "**Second Interim Order**") authorizing use of Cash Collateral on an interim basis through
21 September 16, 2020, for necessary expenses in the amount of \$189,233.00 plus a 10%
22 variance for emergencies during the pre-harvest period as described in the Motion, as
23 described in the Debtor in Possession's amended budget, attached as Exhibit 1 to the Second
24 Order (the "**Amended Budget**"). The Second Interim Order continued to provide the Cash
25 Collateral Replacement Lien, the Conservation Easement Replacement Lien, the Putah Creek
26 Replacement Lien, and the Post-Petition Crop Lien (collectively, the "**Replacement Liens**").
27 The Second Interim Order set a continued interim hearing on the Motion for October 1, 2020
28 (the "**Third Hearing**").

1 The Second Interim Order also required that within (7) days of the end of each week in
2 which the Debtor in Possession uses Cash Collateral (a “**Budgeted Week**”), the Debtor in
3 Possession shall provide weekly periodic accountings to the Secured Creditors’ counsel
4 setting forth the cash receipts and disbursements made by the Debtor in Possession under the
5 Second Interim Order (the “**Cash Collateral Reporting Requirements**”). The Second
6 Interim Order provided that Cash Collateral Reporting Requirements shall include, but not be
7 limited to, a comparison of the Debtor in Possession’s actual financial performance, including
8 cash receipts and disbursements, during the preceding Budgeted Week with the forecast
9 financial performance contained in the cash collateral budget for that same Budgeted Week
10 (the “**Cash Collateral Reports**”).

11 On October 5, 2020, the Court entered its third Order on the Motion (the “**Third**
12 **Interim Order**”) authorizing use of Cash Collateral on an interim basis through the week ending
13 October 31, 2020, for necessary expenses in the amount of \$252,115 plus a 10% variance for
14 emergencies during the pre-harvest period as described in the Motion, as described in the
15 Amended Budget. The Third Interim Order continued to provide the Replacement Liens. The
16 Third Interim Order set a continued interim hearing on the Motion for October 29, 2020 (the
17 “**Fourth Hearing**”).

18 The Third Interim Order included and extended the Cash Collateral Reporting
19 Requirements through the term of the Third Interim Order.

20 On November 9, 2020, the Court entered its fourth Order on the Motion (the “**Fourth**
21 **Interim Order**”) authorizing use of Cash Collateral on an interim basis through the week ending
22 December 11, 2020, for necessary expenses in the amount of \$332,908, plus a 10% variance
23 for emergencies during the pre-harvest period as described in the Motion, as described in the
24 Amended Budget. The Fourth Interim Order continued to provide the Replacement Liens. The
25 Fourth Interim Order set a continued interim hearing on the Motion for December 10, 2020
26 (the “**Fifth Hearing**”).

1 The Fourth Interim Order included and extended the Cash Collateral Reporting
2 Requirements through the term of the Fourth Interim Order.

3 As required by the Fourth Interim Order, on November 25, 2020, the Debtor in
4 Possession filed with a Court a Supplemental Declaration of Russell Burbank In Support of
5 Debtor In Possession's Simplified Cash Collateral Budget for December 2020 through March
6 2021 (the "**Burbank November 25 Declaration**"). A "Simplified Budget" was attached as
7 Exhibit A to the Burbank November 25 Declaration (the "**November 25 Budget**").

8 As set forth in the Burbank November 25 Declaration, the November 25 Budget
9 projects that the Debtor in Possession will make cash disbursement for his business operations
10 ("**Cash Disbursements**") in the amount of \$665,355, for the period beginning December 12,
11 2020 and ending March 30, 2021. Although there does not appear to be any specific request
12 for the continued use of Cash Collateral, it can be implied from the Burbank November 25
13 Declaration that the Debtor in Possession is now requesting authorization to use Cash
14 Collateral, on an interim basis through March 30, 2021, in the amount of \$665,355.00, plus a
15 10% variance for emergencies.

16 The November 25 Budget breaks down the \$665,355.00 in projected Cash
17 Disbursements by month as follows:

18	December 2020	\$144,251
19	January 2021	\$160,157
20	February 2021	\$155,252
21	March 2021	\$205,695
22	Total through March 2021	\$665,355

23 Cash Collateral Reporting

24 The Debtor in Possession has provided Cash Collateral Reports for each of the
25 Budgeted Weeks through the Budgeted Week ended November 27, 2020.

26 It should be noted however, that the Cash Collateral Reports for each of the Budgeted
27 Weeks through the Budgeted Week ended November 6, 2020, included ending inventory
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1 amounts for In-Shell and Processed Meat, both in pounds and in dollars (the “**Inventory**
2 **Reporting**”). A true and correct copy of the Cash Collateral Report for the week ending
3 November 6, 2020 is attached as **Exhibit A** to the Declaration of Douglas H. Kraft filed in
4 support hereof (the “**Kraft December 7 Declaration**”).

5 However, beginning with the Budgeted Week ending November 13, 2020, the Debtor
6 in Possession eliminated the Inventory Reporting from the Cash Collateral Reports. The Cash
7 Collateral Reports for the weeks ending November 13, 2020, November 20, 2020 and
8 November 27, 2020, are attached as **Exhibits B, C, and D** to the Kraft December 7
9 Declaration.

10 FNB relied on the Inventory Reporting to monitor the Debtor in Possession’s
11 inventory, which is a significant portion of FNB’s collateral.

12 Budget Variances

13 Walnut Harvest

14 The Amended Budget projected that the Debtor in Possession would harvest 1,118,400
15 lbs. of walnuts though the Budgeted Week ending November 27, 2020. According to the
16 Cash Collateral Report for the Budgeted Week ending November 27, 2020 (the “**November**
17 **27 Report**”), the Debtor in Possession only harvested 712,820 lbs. of walnuts through that
18 period. FNB understands that Debtor in Possession has completed his harvest. That amounts
19 to negative variance of <405,580> lbs., or a 36% deficit in the walnut harvest.

20 Sales (Invoices)

21 The Amended Budget projected that the Debtor in Possession would have Sales
22 (Invoices) totaling \$825,636 through the Budgeted Week ending November 27, 2020.
23 According to the November 27 Report, sales through the Budgeted Week ending November
24 27, 2020 totaled only \$570,472, which is a negative variance of <\$255,164>, or 31% deficit in
25 Sales (Invoices).

1 Cash Receipts

2 The Amended Budget projected that the Debtor in Possession would have Cash
3 Receipts totaling \$702,100 through the Budgeted Week ending November 27, 2020.
4 According to the November 27 Report, Cash Receipts through the Budgeted Week ending
5 November 27, 2020 totaled \$892,537, which is a positive variance of \$190,417, or 27%.

6 However, the Cash Receipts through the Budgeted Week ending November 27, 2020
7 included \$242,320 received in October under the United States Department of Agriculture,
8 Coronavirus Food Assistance Program (“**CFAP**”). CFAP was established by the Coronavirus
9 Aid, Relief, and Economic Stability Act (the “**CARES Act**”). The CARES Act appropriated
10 \$9.5 billion for the USDA to provide support for agricultural producers impacted by
11 coronavirus. FNB’s Brief Regarding Funds to Be Received Under Coronavirus Food
12 Assistance Program (the “**CFAP Brief**”), which was filed in Solano County Superior Court in
13 connection with FNB’s prepetition loan enforcement and receivership action, is attached as
14 **Exhibit E** to the Kraft December 7 Declaration. The CFAP Brief establishes that the
15 \$242,320 in cash received under CFAP (the “**CFAP Proceeds**”) constitute FNB’s Cash
16 Collateral. The CFAP Proceeds were not included in the Amended Budget as part of the
17 \$702,100 in projected cash receipts.

18 In addition, Cash Receipts through the Budget Week ending November 27, 2020, also
19 included rent of \$116,482 received in October of 2020. The rent of \$116,482 received in
20 October was not included in the Amended Budget as part of the \$702,100 in projected cash
21 receipts.

22 As such, the \$190,417 positive variance in Cash Receipts is misleading. Without the
23 CFAP Proceeds and rent, the Debtor in Possession would have had a negative variance of
24 <\$168,385> in cash receipts, or 24% of budgeted cash receipts.

25 Cash Disbursements

26 The Amended Budget projected that the Debtor in Possession would have Cash
27 Disbursements totaling \$788,199 through the Budgeted Week ending November 27, 2020.
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According to the November 27 Report, Cash Disbursement through the Budgeted Week ending November 27, 2020, totaled \$475,731, which is a positive variance of \$312,458, or 40% of the budgeted Cash Disbursement.

In reviewing the November 27 Report, the following significant variances in Cash Disbursements are apparent:

	Actual	Budget	Variance
Workers Comp Insurance	\$4,041	\$36,000	\$31,959
Contract Labor	\$1,158	\$49,000	\$47,842
Spraying	\$19,799	\$60,000	\$40,201
Electricity – current use	\$40,821	\$55,000	\$14,179
Electricity – Deposit	\$ 0	\$23,000	\$23,000
Equipment Purchases	\$ 0	\$9,063	\$9,063
Debtor's CPA	\$ 0	\$10,000	\$10,000
Total Variance			\$176,244

The remainder of the Cash Disbursement variance seems to be widespread across the line item expenses in the Amended Budget.

Net Cash Flow

The Amended Budget projected that the Debtor in Possession would have Net Cash Flow of a negative <\$86,069> through the Budgeted Week ending November 27, 2020.

According to the November 27 Report, Net Cash Flow through the Budgeted Week ending November 27, 2020, totaled \$416,806, which is a positive variance of \$502,875.

The large positive variance in Net Cash Flow is attributable in part to the CFAP Proceeds of \$242,320 and rent of \$116,482, which were not included in the Amended Budget. Without these funds, the positive variance in Net Cash Flow would be \$140,801.

The remainder of the positive variance in Net Cash Flow is due to the \$312,458 positive variance in Cash Disbursements.

1 General Concerns

2 The Large Variance In Cash Disbursements Is Troubling

3 The fact that the Debtor in Possession's use of Cash Collateral was 40% less than what
4 was projected is certainly good news. However, the 40% variance in Cash Disbursements is
5 also troubling, and raises questions.

6 Is the 40% variance in Cash Disbursements a result of expenses that were not incurred
7 and will not be incurred (i.e., true savings)? Or are they a result of expenses that were not yet
8 incurred, but will be incurred at some time in the future (i.e., expenses deferred)?

9 Alternatively, is the significant variance due to expenses that have been incurred and not yet
10 paid (i.e., payments deferred)? If the variance is due to expenses deferred or payments
11 deferred, are those expenses addressed in the November 25 Budget?

12 Is this large variance in Cash Disbursement an indication that the Debtor in Possession
13 is very bad at budgeting? Or is it an indication that the Debtor in Possession intentionally
14 "sandbagged" the Amended Budget?

15 Either way it calls into question the accuracy and validity of the November 25 Budget.

16 The Debtor in Possession is now apparently asking authorization to spend another
17 \$655,355 in Cash Collateral. Is this amount really necessary? Or is the Debtor in Possession
18 again "sandbagging" the Budget?

19 Are the Projected Increases in Sales Realistic?

20 The November 27 Report shows that the Debtor in Possession missed his sales
21 projections by 31%. Yet, the November 25 Budget is projecting a large increase in sales.

22 The November 25 Budget projects total sales in the four-month budget period ending
23 March 30, 2021, of \$1,382,500, or average sales of \$345,625 per month.

24 As shown in the November 27 Report, actual sales through the Budgeted Week ending
25 November 27 totaled \$570,472, or an average of approximately \$190,157 per month.

26 The Amended Budget projects an increase in sales, on an average monthly basis, of
27 \$155,468 per month, which is an 82% increase in sales.

1 Is an 82% increase in sales over the next four months realistic?

2 Can the Debtor Operate Profitably?

3 Net Cash Flow is not Net Profit.

4 The Debtor in Possession has a history of sizeable net operating losses. While the
5 Debtor in Possession has a positive Net Cash Flow through the Budgeted Week ending
6 November 27, 2020, that does not mean that the Debtor in Possession's operations are in fact
7 profitable. The Debtor in Possession has yet to produce a true profit and loss statement
8 showing the profitability of his operations. As such, it has yet to be established that the
9 Debtor in Possession can operate on a profitable basis.

10 Professional (Restructuring) Expense

11 The Amended Budget and the November 25 Cash Collateral Budget includes line
12 items for Debtor Attorneys and Debtor Financial Advisor. These line items appear to be
13 meant to capture the attorneys' fees incurred by Mr. Willoughby and his firm and by Mr.
14 Burbank. The Notice of Hearing also indicates that the Debtor in Possession will be engaging
15 another law firm as trust and tax counsel. These line items are blank, and no amounts are
16 estimated or projected for these restructuring expense.

17 Given the restructuring expenses which have yet to be budgeted, but which will
18 undoubtedly be sizeable, and given the questions regarding the Debtor in Possessions'
19 profitability, consideration should be given as to whether it is in the best interest of creditors,
20 both secured and unsecured, to allow the Debtor in Possession to continue to operate, rather
21 than go straight to liquidation.

22 **CONDITIONAL CONSENT**

23 FNB is concerned about the accuracy and validity of the November 25 Budget, the
24 Debtor in Possession's ability to meet his sales projections, the ability of the Debtor in
25 Possession to operate profitably, and what must be the ever growing Restructuring Expenses.
26 Given these concerns, FNB believes that any authorization to use Cash Collateral shall be on a
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1 month to month basis, until the Debtor can establish that he can operate profitably and meet
2 his lofty sales projections, something he clearly has not yet done.

3 As such, FNB is willing to consent to the use of Cash Collateral through December 31,
4 2020, in the amount of \$144,251, plus a 10% variance for emergencies, subject to the
5 following conditions:

6 FNB's consent is conditioned upon the following:

- 7 1. The Secured Creditors shall be granted the Replacement Liens, as set forth in the
8 First Interim Order, the Second Interim Order, the Third Interim Order, and Fourth
9 Interim Order (the "**Prior Orders**").
- 10 2. The Cash Collateral Reporting Requirements shall continue, on a weekly basis, for
11 each Budgeted Week and shall include the weekly Inventory Reporting as
12 provided prior to the Budgeted Week ending November 13, 2020.
- 13 3. Counsel for FNB shall have approved the form of Order granting continued use of
14 cash collateral, which shall be consistent with the form of the Prior Orders.

15 Dated: December 7, 2020

KRAFT LAW

16 /s/ Douglas H. Kraft

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18 Douglas H. Kraft
19 Attorney for First Northern Bank of Dixon
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